

National Taxpayer Advocate Legislative Recommendations: 2007 - 2012

Year	LR #	LR Title	Description	Code Section(s) Impacted	Recommendation	Enacted by Legislation or Treasury Reg
2012						
2012	1	Simplify the National Status and Related Requirements for Qualifying Children	Simplify the three-part children's national status requirements in conformity with overall simplification of the family tax benefits.		<p>Simplify the three-part children's national status requirements in conformity with overall simplification of the family tax benefits as the National Taxpayer Advocate previously proposed, as follows:</p> <p>Consolidate the dependency deduction and CTC (non-refundable portion) with head of household filing status into a Family Credit.</p> <p>Consolidate and modify the EITC with the refundable portion of the CTC into a Worker Credit not contingent on qualifying children.</p> <p>For the Family Credit, apply contiguous country rule encompassing the U.S., Canada, and Mexico</p> <p>For the Worker Credit, require an SSN valid for employment.</p> <p>Repeal as obsolete the residence rule that requires the child to be a citizen, national, or otherwise in the U.S.</p>	
2012	2	Amend IRC § 7703(b) to Remove the Household Maintenance Requirement and to Permit Taxpayers Living Apart on the Last Day of the Tax Year Who Have Legally Binding Separation Agreements to be Considered "Not Married"	IRC § 7703(b) prevents taxpayers from being considered "not married" in two ways. First, the statute retains an outdated "cost of maintaining a household" test that disproportionately affects members of racial and ethnic minorities who work and have children. Second, it requires spouses to have lived apart for the last six months of the year even if they have a written, legally binding separation agreement by year's end.	IRC § 7703(b)	The National Taxpayer Advocate recommends that Congress amend IRC § 7703(b) to remove the cost of maintaining a household test and permit taxpayers living apart on the last day of the tax year who have a legally binding separation agreement to be considered "not married."	
2012	3	Amend the Adoption Credit to Acknowledge Jurisdiction of Native American Tribes	Current law harms Native American children with special needs by increasing the cost of a taxpayer's last known address to similarly situated special needs children in States.	IRC § 7871(a)	The National Taxpayer Advocate recommends that Congress amend IRC § 7871(a) to include IRC § 23 in the list of Code sections for which a Native American tribal government is treated as a "State." If an Native American tribal government is treated as a State for purposes of IRC § 23, its determination that a child has special needs would enable adoptive parents to claim the special needs adoption credit, provided that the other requirements of the Internal Revenue Code are met.	
2012	4	Amend IRC § 7701 to Provide a Definition of "Last Known Address," and Require the IRS to Mail Duplicate Notices to Credible Alternate Addresses	The IRS is required to send at least 20 notices or documents contemplated in various Internal Revenue Code provisions to a taxpayer's last known address. None of these provisions includes a definition of "last known address" (nor is such a definition found elsewhere in the IRC), yet several of them provide for important statutory rights that must be claimed within time limits triggered by the IRS's mailing of the notice to the "last known address."	IRC § 7701	<p>The National Taxpayer Advocate reiterates her recommendation that Congress amend IRC § 7701 to add a definition of "last known address" that incorporates case law, including the Fifth Circuit's holdings in the Mulder and Terrell cases, and current regulations. She also reiterates her recommendation that Congress direct the Secretary of Treasury to:</p> <ol style="list-style-type: none"> 1. Develop procedures for checking third-party databases for credible alternate addresses prior to sending notices that establish legal rights and obligations (i.e., Statutory Notices of Deficiency, Collection Due Process notices, notices of federal tax lien, etc.). 2. When the IRS learns that its records do not contain a taxpayer's correct address, and the taxpayer has a credible alternate address, require the IRS to mail the notice simultaneously to the last known and credible alternate addresses (as defined by the Secretary). 	

Year	LR #	LR Title	Description	Code Section(s) Impacted	Recommendation	Enacted by Legislation or Treasury Reg
2012	5	Amend IRC § 7403 to Provide Taxpayer Protections Before Lien Foreclosure Suits on Principal Residences	Taxpayers should be protected from loss of their principal residences by lien foreclosure because loss of a principal residence causes economic harm, disrupts taxpayers and their families, and should only be used as a last resort.	IRC § 7403	The National Taxpayer Advocate recommends that Congress amend IRC § 7403 to preclude an IRS employee from requesting that the AG direct the filing of a civil action to foreclose the federal tax lien against a taxpayer’s principal residence in U.S. District Court, unless the IRS employee has received executive-level approval after determining that:	
					The taxpayer’s other property or rights to property, if sold, are insufficient to pay the amount due, including the expenses of the proceedings; and	
					The foreclosure and sale of the residence will not create an economic hardship due to the financial condition of the taxpayer.	
2012	6	Amend IRC §§ 6320 and 6330 to Provide Collection Due Process Rights to Third Parties (Known as Nominees, Alter Egos, and Transferees) Holding Legal Title to Property Subject to IRS Collection Actions	The IRS files Notices of Federal Tax Lien (NFTLs) and issues levies against the property of third parties (individuals or entities, known as transferees, nominees, or alter egos) that hold property purportedly belonging to taxpayers subject to collection. However, these third parties are not considered taxpayers for the purposes of Collection Due Process (CDP) rights under Internal Revenue Code (IRC) §§ 6320 and 6330 and therefore are not entitled to CDP rights. The IRS Restructuring and Reform Act of 1998 (RRA 98) failed to provide for notice, CDP hearings, and subsequent pre-payment judicial review for third parties.	IRC §§ 6320 and 6330	The National Taxpayer Advocate recommends that Congress amend IRC §§ 6320 and 6330 to extend Collection Due Process rights to “affected third parties,” known as nominees, alter egos, and transferees, who hold legal title to property subject to IRS collection actions.	
2012	7	Protect Taxpayers and the Public Fisc from Third-Party Misappropriation of Payroll Taxes	The National Taxpayer Advocate recommends closing loopholes in the tax law that a few “bad actors” in the payroll industry use to harm others. The recommendations protect both the government’s and taxpayers’ interests in preventing employment tax misappropriation and increasing compliance.	IRC § 3504	To protect taxpayers from third party misappropriation of payroll taxes, the National Taxpayer Advocate recommends that Congress:	
					Amend the IRC to require any person who enters into an agreement with an employer to collect, report, and pay any employment taxes to furnish a performance bond that specifically guarantees payment of federal payroll taxes collected, deducted, or withheld by such person from an employer and from wages or compensation paid to employees.	
					Amend IRC § 3504 to require agents with an approved Form 2678, Employer/Payer Appointment of Agent, to allocate reported and paid employment taxes among their clients using a form prescribed by the IRS and impose a penalty for the failure to file absent reasonable cause.	
					Amend the U.S. Bankruptcy Code to clarify that IRC § 6672 penalties survive bankruptcy in the case of non-individual debtors.	
2011						
2011	1	Enact the Recommendations of the National Taxpayer Advocate to Protect Taxpayer Rights	Over the last decade, the National Taxpayer Advocate has recommended many legislative changes that would serve to protect taxpayer rights. At a time when the IRS budget is shrinking, and resources are shifting to enforcement in order to increase revenue, taxpayer rights must be a priority.	IRC § 3504	The National Taxpayer Advocate urges congress to enact the legislative recommendations detailed in previous annual reports, beginning with the 2007 recommendation to codify a taxpayer bill of rights (TBOR) that would explicitly detail the rights and responsibilities of taxpayers. The proposed TBOR includes the following rights: the right to be informed; the right to be assisted; the right to be heard; the right to pay no more than the correct amount of tax; the right of appeal; the right to certainty; the right to privacy; the right to confidentiality; the right to representation; and the right to a fair and just tax system. Proposed taxpayer responsibilities include: the obligation to be honest; the obligation to be cooperative; the obligation to provide accurate information and documents on time; the obligation to keep records; and the obligation to pay taxes on time.	

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2011	2	Restrict Access to the Death Master File	The Social Security Administration (SSA) maintains a "Death Master File" (DMF) containing the full name, SSN, date of birth, date of death, and the county, state, and ZIP code of the last address on record of decedents. DMF data is updated weekly and made available to the public. today, anyone can quickly find a number of websites (including genealogy sites) that publish DMF information free or for a nominal fee.	IRC §§ 552(b)(6) and (b)(7) (c)	The National Taxpayer Advocate recommends that congress enact legislation to restrict access to certain personally identifiable information in the DMF. The National Taxpayer Advocate is not recommending a specific approach at this time, but outlines below several available options.	H.J. Res. 59, 113th Cong. § 203 (2013)
2011	3	Mandate that the IRS, in Conjunction with the National Taxpayer Advocate, Review Any Proposed Expanded Math Error Authority to Protect Taxpayer Rights	Internal Revenue Code (IRC) § 6213, in subsections (b) and (g), authorizes the IRS to use its math error authority to sum- marily assess tax and bypass normal deficiency procedures. From the outset, Congress has made clear that use of math error authority is meant to be limited in scope and should not be used to resolve an uncertainty against the taxpayer.	IRC §§ 6213(b) and (g)	To ensure that IRS use of math error authority does not impair taxpayers' rights and minimizes burden to both the taxpayer and the IRS, the National Taxpayer Advocate recommends that Congress require the IRS to develop math error notices that clearly describe what is being changed and why, and tell the taxpayer what steps he or she should take to contest the change. The National Taxpayer Advocate further recommends that Congress consider the following issues in connection with any future expansions of math error authority under IRC § 6213(g):	
					1. Confine use of math error authority to instances that are not factually complex, can be verified on accurate, reliable government databases, and do not require the IRS to analyze facts and circumstances or weigh the adequacy of information.	
					2. Permit the IRS to use math error authority in conjunction with private third-party databases only where the information has been identified as reliable and accurate, and thus, would not subject the IRS to constraints in litigation.	
					3. Restrict math error authority in situations with a high abatement rate, where the use of math error authority appears to be unduly burdening compliant taxpayers by requiring them to submit additional documentation within a 60-day timeframe compared to a 90-day timeframe when deficiency procedures are used.	
2011	3	Clarify that the Scope and Standard of Tax Court Determinations Under Internal Revenue Code Section 6015(f) is De Novo	Married taxpayers who file joint returns are jointly and severally liable for any deficiency or tax due. An "innocent spouse" statute, Internal Revenue Code (IRC) § 6015, provides for relief from deficiencies in the specific circumstances as described in subsections (b) and (c). If relief is unavailable under subsection (b) or (c), a taxpayer may qualify for "equitable" innocent spouse relief from deficiencies and underpayments pursuant to subsection (f). Relief under IRC § 6015(f) is appropriate when, taking into account all the facts and circumstances, it would be inequitable to hold a joint filer liable for the unpaid tax or deficiency. IRS guidance enumerates various factors that should be considered and may weigh in favor of or against granting equitable relief.	IRC § 6015(f)	The National Taxpayer Advocate recommends that congress amend IRC § 6015 to specify that the scope and standard of review in tax court determinations under IRC § 6015(f) is de novo.	

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2011	5	Amend IRC & 6343(a) to Permit the IRS to Release Levies on Business Taxpayers that Impose Economic Hardship	Longstanding IRS regulations under Internal Revenue Code Section 6343(a) relieve individuals, but not businesses, from levies on the grounds of economic hardship. In one area of collections activity, the IRS and Department of Treasury have expressly declined to take into account business economic hardship, citing concern that the government might thereby be forgoing the collection of taxes to support a nonviable business. Thus, the IRS will not release levies when a business experiences an economic hardship, leading the IRS to use levies in lieu of collection alternatives.	IRC § 6343(a); IRC § 6672	<p>The National Taxpayer Advocate recommends that Congress amend IRC § 6343(a)(1)(d) to:</p> <ul style="list-style-type: none"> - permit the IRS, in its discretion, to release a levy against the taxpayer's property or rights to property if the IRS determines that the satisfaction of the levy is creating an economic hardship due to the financial condition of the taxpayer's business; and - require the IRS, in making the determination to release a levy against a business on economic hardship grounds, to consider the economic viability of the business, the nature and extent of the hardship (including whether the taxpayer exercised ordinary business care and prudence), and the potential harm to individuals if the business is liquidated, as well as whether the taxes could be collected from a responsible person under an IRC § 6672 Trust Fund Recovery Penalty (TFRP) assessment. 	
2011	6	Amend the Erroneous Refund Penalty to Permit Relief in Case of Reasonable Cause for Claim to Refundable Credits	Allowing a taxpayer to present reasonable cause for an error would be consistent with the purpose of refundable credits, which generally are economic incentives, designed to encourage certain behaviors, and structured as special tax breaks.	IRC § 6676	Amend the erroneous refund penalty under IRC § 6676 to permit relief from a penalty for erroneously claiming a refund pursuant to a refundable credit if the taxpayer acted with reasonable cause and in good faith.	
2011	7	Authorize the IRS Office of Appeals to Rescind Notices of Determination Issued in Collection Due Process Cases	The inability of Appeals to rescind the NOD and rehear issues in appropriate cases may deprive some taxpayers of meaningful hearings, create a delay in resolving a taxpayer's case, and unnecessarily use Tax Court and IRS resources.	IRC § 6330	The National Taxpayer Advocate recommends that Congress amend Internal Revenue Code § 6330 to permit the IRS Office of Appeals, with the consent of the taxpayer, to rescind CDP NODs in cases where the taxpayer has raised a legitimate concern regarding the NOD within the 30-day period for petitioning the Tax Court, and before the taxpayer has requested Tax Court review.	
2011	8	Clarify that the Emergency Exception to the Anti-Deficiency Act Includes IRS Activities that Protect Taxpayer Life and Property	Failing this, IRC § 7811 should be clarified to provide that the National Taxpayer Advocate's authority to issue TAOs continues during a lapse in appropriations and includes the authority to incur obligations in advance of appropriations, and that the IRS has the authority to incur obligations in advance of appropriations to comply with any TAOs.	IRC § 7811	The National Taxpayer Advocate recommends that congress clarify that the emergency exception to the anti-deficiency act includes IRS activity involving the safety of human life, including taxpayer life, or the protection of property, including taxpayer property. Alternatively, the National Taxpayer Advocate recommends that congress clarify that the National Taxpayer Advocate's authority to issue TAOs pursuant to IRC § 7811 continues during a lapse in appropriations and includes the authority to incur obligations in advance of appropriations, and that the IRS can incur obligations in advance of appropriations to comply with any TAO issued under IRC § 7811.	
2011	9	Assessment of Civil Penalties Against Preparers of Fraudulent Returns	There is a small segment of the tax return preparer community who defraud taxpayers and the IRS by altering the taxpayers' returns without their knowledge. There needs to be a sizeable monetary penalty to discourage return preparers from engaging in this type of behavior.		The National Taxpayer Advocate recommends that congress amend the Internal Revenue Code to provide that when the issuance of an erroneous refund to a return preparer is due to fraud, the IRS may impose a penalty, in addition to other penalties provided by law, equal to 100 percent of that erroneous refund.	
2011	10	Provide Administrative Review of Automatic Revocations of Exempt Status, Develop a Form 1023-EZ, and Reduce Costs to Taxpayers and the IRS by Implementing "Cyber Assistant"	Requiring the IRS to afford administrative review of automatic revocations merely recognizes that the IRS may err in concluding that an organization is no longer exempt. Taxpayers should have means of obtaining relief when that error occurs, rather than being required to reapply for recognition of exempt status. Requiring the IRS to develop a Form 1023-EZ would lessen taxpayer burden without depriving the IRS of any information it currently tracks or uses. Providing funding for and requiring the IRS to implement cyber assistant would improve the accuracy and consistency of applications, thereby conserving resources for taxpayers and the IRS.		<p>The National Taxpayer Advocate recommends that Congress:</p> <ol style="list-style-type: none"> 1. Require the IRS to allow administrative review of its conclusion that an organization's exempt status was automatically revoked. 2. Require the IRS to develop a Form 1023-EZ. 3. Require and provide sufficient funding for the IRS to implement cyber assistant for use in preparing applications for recognition of exempt status. 	

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2011	11	Allow Individual U.S. Taxpayers Residing Abroad the Option to Choose the Allow Individual U.S. Taxpayers Residing Abroad the Option to Choose the Currency of Their Country of Residence as Their Functional Currency	Allowing an individual U.S. taxpayer living abroad the option of using the currency of the country of residence for tax purposes would facilitate both compliance with and administration of U.S. tax laws, and would produce results based on economic reality rather than the arbitrary movement of exchange rates.	IRC § 985	Amend Internal Revenue Code (IRC) § 985 to allow individual U.S. Taxpayers residing abroad: 1. To adopt the local currency as their functional currency with respect to certain activities associated with their residence in a foreign country (e.g., activities of a qualified residence unit or QRU), giving individuals the flexibility currently extended to business taxpayers; and 2. To use an average exchange rate or other reasonable method of accounting to convert foreign currency into U.S. dollars in order to determine the individual's taxable income and gain for taxpayers who do not adopt the QRU and have the U.S. dollar as their functional currency for the taxable year.	
2011	12	Codify the Authority of the Office of the Taxpayer Advocate to File Amicus Briefs, Comment on Regulations, and Issue Taxpayer Advocate Directives.	The National Taxpayer Advocate is required to assist taxpayers in resolving problems with the IRS, to identify areas in which taxpayers have frequent problems or that are the frequent subject of litigation, and to identify administrative and legislative solutions to reduce controversy and mitigate such problems. Despite these mandates, the mission of the Office of the Taxpayer Advocate would be advanced by additional statutory authority in three areas: amicus curiae briefs pertaining to taxpayer rights; the administrative rulemaking process; and the Taxpayer Advocate Directive.	IRC § 7811	To enhance the independence of the Office of the Taxpayer Advocate and ensure that the rights of taxpayers, including the most vulnerable and unrepresented, are considered and protected in tax administration, regulations, and litigation, the National Taxpayer Advocate recommends that Congress: 1. Authorize the National Taxpayer Advocate to submit amicus curiae briefs in federal appellate litigation on matters relating to the protection of taxpayer rights that the National Taxpayer Advocate has identified as concerns in her Annual Reports to Congress. 2. Require the IRS to submit proposed or temporary regulations pre-publication to the National Taxpayer Advocate for comment within a reasonable time, and address those comments in the preamble to final regulations. 3. Authorize the National Taxpayer Advocate to appoint an independent counsel who reports directly to the National Taxpayer Advocate, to provide independent legal advice, including submission of amicus curiae briefs and comments on proposed or temporary regulations. 4. Grant to the National Taxpayer Advocate nondelegable authority to issue a Taxpayer Advocate Directive with respect to any IRS program, proposed program, action, or failure to act that may create a significant hardship for a segment of the taxpayer population or for taxpayers at large, and require that, to object to a directive, the IRS would have to respond timely in writing. 5. Amend IRC § 7811 to require the IRS to raise its objections to a Taxpayer Assistance Order (i.e., appeal the Order) issued by the National Taxpayer Advocate by responding in writing within a reasonable time, as established by the National Taxpayer Advocate in the Order.	
2011	13	Appoint an IRS Historian	From time to time, the IRS undertakes initiatives to improve tax administration, with both successes and failures. No unit of the IRS is charged with recording these events, so any opportunity to learn from them in the future is lost. A leading academic tax historian has noted that while publication 1694, IRS Historical Fact Book: A Chronology, 1646-1992, memorializes a tax timeline, "[w]e do not have a scholarly history of the Internal Revenue Service." More dramatically, a critic has testified before the Senate Finance Committee that "the IRS shreds its paper trail, which means there is no history, no evidence, and ultimately no accountability." A record of IRS accomplishments is lost along with historical facts.		Create a permanent position within the IRS for a historian with expertise in federal taxation as well as archival methods. Mandate that the IRS historian record history objectively, accurately, and without deletion. To ensure historical expertise regardless of contemporary IRS policies, align the appointment with the archivist of the United States rather than the Commissioner of Internal Revenue.	

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2010						
2010	1	Enact Tax Reform Now	Reform Tax Code, based on six core principles, to eliminate tax law complexity as the most serious problem facing taxpayers. Comprehensive tax reform should eliminate all tax expenditures, unless the benefits of a particular tax incentive outweigh the complexity created by the special rule.		Simplification Proposals.	
					Repeal the Alternative Minimum Tax (AMT) for Individuals.	
					Consolidate the Family Status Provisions.	
					Improve Other Provisions Relating to Taxation of the Family Unit.	
					Consolidate Education Savings Tax Incentives.	
					Consolidate Retirement Savings Tax Incentives.	
					Simplify Worker Classification Determinations to Minimize Employee-versus Independent Contractor Disputes.	
					Eliminate (or Reduce) Procedural Incentives for Lawmakers to Enact Tax Sunsets.	
					Eliminate (or Simplify) Phase-Outs.	
					Streamline the Penalty Regime.	
2010	2	Repeal Information Reporting on Purchases of Goods, but Require Reporting on Corporate and Certain Other Payments	Repeal provision of health care bill requiring reporting of any purchases of \$600 or more due to the administrative burden of the requirement. However, retain provision of health care bill requiring information reports for payments to corporations for services or other income.	IRC § 6041	The National Taxpayer Advocate recommends that Congress amend IRC § 6041 to repeal the requirement for information reports on purchases of goods (as well as property of any sort). Retain the new requirement for information reports on payments to corporations for services, determinable gains, or other income. Expand third-party data by eliminating the \$10 threshold for certain bank information reports and by pursuing certain state data.	
2010	3	Allow Taxpayers to: (1) Request Equitable Relief Under § 6015(f) or 66(c) At Any Time Before Expiration of Limitations Period and (2) Raise Innocent Spouse Relief as a Defense in Collection Actions	Amend Code to specify that taxpayers may request equitable relief under the “innocent spouse” rules at any time before the expiration of the collections period, rather than being constrained by the current two-year deadline. Additionally, allow taxpayers to request innocent spouse relief as a defense in collection actions.	IRC § 6015(f) & IRC § 66	The National Taxpayer Advocate recommends that Congress amend IRC §§ 6015 and 66 to specify that: 1. Effective with respect to any liability for tax arising after the date of enactment and any liability for tax arising on or before such date but remaining unpaid as of such date, taxpayers may request equitable relief at any time before expiration of the period of limitations on collection, regardless of whether the taxpayer previously received a final administrative determination denying as untimely a request for equitable relief for the same tax year or meaningfully participated in a prior proceeding in which equitable relief for the same tax year was denied as untimely; and 2. Taxpayers may raise innocent spouse relief as a defense in a proceeding brought under any provision of title 26 (including §§ 6213, 6320, 6330, 7402, and 7403) or any case under title 11 of the United States Code.	
2010	4	Remove the 36-Month “Testing Period” that May Trigger Cancellation of Debt Reporting	Amend § 6050P to remove automatic issuance, after 36-month of nonpayment of debt, of Form 1099-C, Cancellation of Debt. (Automatic issuance of 1099-C assumes the creditor has cancelled a taxpayer’s debt, thereby triggering additional tax, even when the creditor continues to attempt collection of the debt.)	IRC § 6050P	The National Taxpayer Advocate recommends that Congress amend IRC § 6050P to repeal the 36-month regulatory “testing period” as a basis on which to issue a Form 1099-C.	
2010	5	Amend § 3402(p) to Allow Voluntary Withholding on Payments Made for Lost Earnings from Disasters	Amend § 3402(p) to allow taxpayers who receive compensation for lost earnings or profits in the wake of natural disasters to voluntarily withhold income tax from these payments in order to avoid surprise year-end tax liability.	IRC § 3402(p)	The National Taxpayer Advocate recommends Congress amend IRC § 3402(p) to require withholding of income taxes from payments made pursuant to claims for lost earnings or profits that result from an event designated by the Secretary of Treasury to be a disaster, regardless of whether that event is declared a disaster by the President pursuant to the Stafford Act, unless the recipient expressly opts out of such withholding at the time of payment.	Proposed Reg T.D. 9646

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2010	6	Enact a Statute of Limitations to Limit the Retroactive Effect of Revocation of an Organization's Exempt Status	Enact a statute of limitations period to prevent the collection of back taxes that predate the limitations period following revocation of a charity's exempt status. The recommended limitations period was three years (except in cases of fraud, non-filing, or substantial omission on a return).	IRC § 501(c)(3) & IRC § 6501	The National Taxpayer Advocate recommends that Congress enact a statute of limitation for revocation of exempt status, generally for three years, that would run from the filing of the return for the year in question. As under current law, in case of substantial omission of items from the return, the statute would run for six years, but in case of fraud, tax evasion, or non-filing of the return, the statute of limitation would not run. The time-bar would apply not only to the effective date of revocation but also to the introduction of past facts from closed years as a reason for revocation. Statutory certainty regarding the period in issue would help to align revocation with assessment.	
2010	7	Protect Taxpayer Privacy in Whistleblower Cases	Amend § 7623 and other applicable provisions to require redaction of third-party return information in whistleblower claim proceedings, in which the whistleblower is a party to the action but the third-party taxpayer is not. Allow the third-party taxpayer to request further redactions before disclosure and authorize civil damages for unauthorized disclosure by the whistleblower.	IRC § 7623	The National Taxpayer Advocate recommends that Congress amend IRC § 7623 or other applicable provisions to require redaction of third-party return information in administrative and judicial proceedings relating to a whistleblower claim, with an opportunity for the taxpayer to request further redactions before disclosure. The taxpayer would have a subsequent right of action for civil damages for unauthorized disclosure by the whistleblower.	
2010	8	Revise the Willfulness Component of the Trust Fund Recovery Penalty Statute	Revise willfulness component of § 6672 so that responsible persons can continue to pay other creditors of delinquent businesses, as long as (1) payment arrangements are made to satisfy liability as soon as the problem is identified, and (2) the entity remains current with payment and filing obligations.	IRC § 6672	The National Taxpayer Advocate recommends that Congress amend IRC § 6672 to provide that the conduct of a responsible person who obtains knowledge of trust fund taxes not being timely paid because of an intervening bad act shall not be deemed willful if the delinquent business: (1) promptly makes payment arrangements to satisfy the liability based upon the IRS's determination of the minimal working capital needs of the business, and (2) remains current with payment and filing obligations.	
2010	9	Designate Attorneys' Fees Awarded Under § 7430 Ineligible for Offset to Satisfy Preexisting Government Debts	Amend § 7430 to stipulate that attorneys' fees awarded to a taxpayer may not be used to satisfy the taxpayer's preexisting, unrelated government debt. (Subjecting attorney fee awards to offset undercuts the purpose of fee-shifting by discouraging taxpayers reluctant to bring meritorious suits due to the cost of legal representation.)	IRC § 7430	The National Taxpayer Advocate recommends that Congress amend IRC § 7430 to declare that attorneys' fees are ineligible for offset to satisfy a litigant's pre-existing federal government debt.	
2010	10	Extend Due Date for S-Corp Elections to Reduce High Rate of Untimely Elections	Allow a small business corporation to elect S-Corp treatment by checking a box on its first timely filed return (required 3 months and 15 days following the end of its taxable year). (S-Corp election is currently required on a separate form that must be filed 3 months and 15 days following the beginning of the taxable year, creating a filing inconsistency that leads many small businesses to unknowingly forego favorable S-Corp treatment.)	IRC § 1362(b)(1)	The National Taxpayer Advocate recommends that Congress amend IRC § 1362(b)(1) to allow a small business corporation to elect to be treated as an S corporation by checking a box on its timely filed (including extensions) Form 1120S, U.S. Income Tax Return for an S Corporation.	
2010	11	Enact a Uniform Federal Agency External Ombudsman Act	Enact a Federal Agency External Ombudsmen Act to provide a uniform structure and set of protections to each newly-created ombudsman.		The National Taxpayer Advocate recommends that Congress enact a Federal Agency External Ombudsmen Act to ensure protections to and create uniformity among all future federal external ombudsmen.	

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2009						
2009	1	Direct Treasury to Reverse "Pay Refunds First, Verify Eligibility Later" Approach	Direct Treasury to develop a report (within one year) detailing the administrative and legislative steps required to allow the IRS to receive and process information returns (Forms W-2, 1099, Wage and Tax Statement) before processing tax returns. (End goal to fully implement required changes within ten years.)	IRC § 6049, IRC § 6042, IRC § 6051	The National Taxpayer Advocate recommends that Congress direct the Treasury Department to prepare a report identifying the administrative and legislative steps required to allow the IRS to receive and process information reporting documents before it processes tax returns. The Treasury Department should be given a full year to prepare its report in light of the complexity of the issue and the actions that would be required of the IRS, the SSA, private employers, and financial institutions. The goal should be to fully implement required changes within five years from the time the report is completed.	
2009	2	Strengthen Independence of IRS Office of Appeals	Strengthen independence of IRS Office of Appeals by enacting legislation requiring the presence of at least one appeals officer and settlement officer within each state and allowing taxpayer access to such officers upon request. Further require that each Appeals office maintain independent office space and equipment.	IRC § 3465(b)	The National Taxpayer Advocate recommends that Congress pass legislation to: 1. Require that Appeals have at least one appeals officer and settlement officer located and regularly available within every state, the District of Columbia, and Puerto Rico, and allow taxpayers access to telephonic, correspondence, or face-to-face hearings with the local office when requested.	
					2. Provide that each Appeals office maintain separate office space, separate phone, facsimile, and other electronic communication access, and a separate post office address from any IRS office co-located with the Appeals office.	
2009	3	Exclude Settlements for Pain and Suffering from Gross Income	Amend § 104(a)(2) to exclude from gross income any settlement payments or judgments received for mental anguish, emotional distress, or pain and suffering, thereby eliminating the distinction in the tax code between compensation for mental and physical illness.	IRC § 104(a)(2)	Amend IRC §104(a)(2) to exclude from gross income payments received as settlement for mental anguish, emotional distress, and pain and suffering.	
2009	4	Strengthen Taxpayer Protections Related to Federal Tax Liens.	Amend Code to require that IRS consider certain factors prior to filing NFTLs, create pre-filing administrative review of lien determinations, and set specific time frames for reporting of derogatory lien information on taxpayer credit reports.	IRC §§ 6321, 6322, and 6323(a).	The National Taxpayer Advocate recommends that Congress: 1. Amend the Internal Revenue Code to: a) Require that prior to filing an NFTL, the IRS must review the taxpayer's information (including IRS and available third party information) concerning the taxpayer's assets, income, and the value of the equity in the assets; and make a determination, weighing all facts and circumstances, that (1) the NFTL will attach to property, and (2) that the benefit to the government of the NFTL filing outweighs the harm to the taxpayer and that the NFTL filing will not jeopardize the taxpayer's ability to comply with the tax laws in the future.	
					b) Allow a taxpayer to appeal any lien filing determination to the IRS Office of Appeals before the NFTL is filed. The IRS must notify taxpayers of their right to have an appeals officer review an NFTL determination. c) Explicitly provide under IRC § 7432 for civil damages for improper NFTL filing or failure to make the required NFTL determination described above. d) Clarify that under IRC § 7433, a taxpayer may bring an action for improper lien filing or failure to make the required lien determination described above.	
					2. Amend § 605(a)(3) of the Fair Credit Reporting Act to: a) Require removal of derogatory lien filing information from credit reports six years from the "refile by" date on the lien unless the lien is refiled.	
					b) Require immediate removal of derogatory lien filing information from credit reports if the lien is released within two years from the date of filing.	
					c) Require removal of derogatory lien filing information from credit reports within two years from the date of release if released more than two years from the date of the NFTL filing.	
					d) Require immediate removal of all information about the NFTL filing if the IRS withdraws such a notice under IRC § 6323(j).	

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2009	5	Impose Collection Protections on Refund Offsets for EITC Recipients.	Limit to 15% the portion of any tax refund attributable to the EITC that the IRS may offset due to debts owed to government entities.	IRC § 6402	The National Taxpayer Advocate recommends that Congress amend IRC § 6402 by adding language to limit the amount of the tax refund attributable to the EITC that the Secretary can offset pursuant to IRC §§ 6402(a) through (e). The provision should prohibit the Secretary from offsetting the refund by more than 15 percent of the portion attributable to the EITC.	
2009	6	Apply Uniform Limits and Extensions to Levy Actions on Social Security Benefits.	Limit all levies on Social Security benefits to 15% and exempt from levies all taxpayers at or below 250% of the poverty level. Prohibit post-CSED paper levies of Social Security benefits.	IRC § 6331(h) IRC § 6334(a)(9)	<p>The National Taxpayer Advocate recommends that Congress amend the Internal Revenue Code to:</p> <ol style="list-style-type: none"> 1. Codify IRS administrative policy of exempting all taxpayers with incomes at or below 250 percent of the poverty level from FPLP levies under IRC § 6331(h); 2. Modify "specified payments" under IRC § 6331(h) to exclude amounts exempt under IRC § 6334(a)(9) due to a taxpayer's standard deduction and personal exemptions for all levies on Social Security benefits; 3. Limit both FPLP and paper levies of Social Security benefits to 15 percent of these payments; 4. Codify existing IRS administrative practice to require the release of FPLP levies upon expiration of the CSED; and 5. Prohibit the IRS's post-CSED collection by paper levy upon a taxpayer's fixed and determinable right to future Social Security benefits unless: <ol style="list-style-type: none"> a. the taxpayer has exhibited flagrant conduct within three months of the CSED as determined by IRS personnel; and b. the levy is limited to the balance due at the CSED. 	
2009	7	Allow Taxpayers to Raise Relief Under §§ 6015 and 66 as a Defense in Collection Actions.	Congress should expressly provide that taxpayers can raise relief from joint and several liability, under the §§ 6015 and 66 innocent spouse provisions, as a defense in federal district court collection suits.	IRC §§ 6015 and 66	Amend IRC §§ 6015 and 66 to clarify that taxpayers may raise relief under those sections as a defense in a proceeding brought under any provision of Title 26 (including §§ 6213, 6320, 6330, 7402, and 7403) or any case under title 11 of the United States Code.	
2009	8	Eliminate Suspension of Collection Statute During Qualified Hospitalizations Due to Combat Service.	Amend § 7508(a) to eliminate the suspension of the collection statute during any period of qualified hospitalization after service in a combat zone, in order to provide consistent treatment for military and civilian taxpayers.	IRC § 7508(a)	The National Taxpayer Advocate recommends that Congress amend IRC § 7508(a) to eliminate the suspension of the collection statute during any period of qualified hospitalization after service in a combat zone or performance of combatant activities in a contingency operation.	
2009	9	Provide a Uniform Definition of a Hardship Withdrawal from Qualified Retirement Plans.	Establish uniform rules regarding the availability and tax consequences of hardship withdrawals from qualified retirement plans. Exempt hardship distributions from the 10% additional tax imposed by § 72(t).	IRC § 72(t)	<p>The National Taxpayer Advocate recommends that Congress establish uniform rules regarding the availability and tax consequences of hardship withdrawals from tax-advantaged retirement plans and arrangements. Hardship withdrawals should be permitted when a participant is faced with an "unforeseeable emergency." Examples of an unforeseeable emergency may include:</p> <ol style="list-style-type: none"> 1. expenses for medical care incurred by the employee, the employee's spouse or dependents; 2. payments necessary to prevent the eviction of the employee from his or her principal residence or foreclosure on the mortgage on that residence; 3. loss of property due to casualty; or 4. severe financial hardship resulting from an extended period of unemployment. <p>The National Taxpayer Advocate further recommends that such hardship distributions be made exempt from the ten percent additional tax imposed by IRC § 72(t).</p>	
2009	10	Provide a Fixed Statute of Limitations for U.S. Virgin Islands Taxpayers.	Amend law to provide a fixed statute of limitations for USVI taxpayers so that USVI taxpayers are subject to the same statute of limitations period as other U.S. taxpayers.	IRC § 6501	Provide that the filing of a non-fraudulent return with the USVI by a person claiming to be a bona fide USVI resident is treated as the filing of a return with the IRS so that the filing starts the statute of limitations under Internal Revenue Code (IRC) § 6501. This change should apply to tax years after 1986. However, it should only be effective with respect to assessments made 90 or more days after it is enacted to allow the IRS time to wrap up any ongoing examinations. As a correlative matter, require the USVI to automatically provide copies of returns filed with its BIR to the IRS within a reasonable period of time.	

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2009	11	Increase the Threshold for the Election to Claim the Foreign Tax Credit Without Filing Form 1116 for Individuals, and Index it for Inflation.	Amend § 904(k)(2)(b) to increase the threshold amount for creditable foreign taxes on qualified passive income to \$500 (\$1,000 for joint filers), and index the threshold amount to inflation.	IRC § 904(k)(2)(B)	The National Taxpayer Advocate recommends that Congress amend IRC § 904(k)(2)(B) to increase the amount of creditable foreign taxes on qualified passive income threshold to \$500 (\$1000 if filing a joint return) and index this amount for inflation in \$50 increments.	
2008						
2008	1	Repeal the AMT for Individuals.	Repeal the AMT for individuals in order to avoid burdening individuals living in high-tax states.	IRC §§ 55-59	The National Taxpayer Advocate recommends that Congress repeal the provisions of the Internal Revenue Code that pertain to the AMT for individuals in the context of fundamental tax reform. The obvious challenge in repealing the AMT (or even permanently indexing the AMT exemption amounts) is that the AMT's increasing revenue stream has been built into revenue estimates, so if the AMT is repealed, either Congress will have to raise tax receipts in other ways or budget deficits will balloon. To provide taxpayers with partial short-term relief from the AMT, Congress has enacted a series of "patches" since 2001 that have temporarily increased the AMT exemption amounts to prevent the AMT from affecting a larger number of taxpayers.	
2008	2	Simplify the Family Status Provisions.	In order to simplify filing procedures for taxpayers and lessen administrative difficulties, consolidate family status provisions (filing status, personal and dependency exemptions, child tax credit, EITC, etc.) into two categories: (1) a Family Credit, to reflect the costs of raising a family, and (2) a Worker Credit, to provide a subsidy to low-income workers.		The National Taxpayer Advocate makes the following recommendations: 1. Consolidate the numerous family status provisions into two. One provision (the Family Credit) would reflect the costs of maintaining a household and raising a family. It would incorporate all current family status provisions that are based on the specific make-up of the family unit and its corresponding ability to pay taxes. The second provision (which could be called the "Worker Credit" or could continue to be called the EITC) would provide an incentive and subsidy for low income individuals to work.	
					2. The refundable Family Credit, which would replace the personal and dependency exemptions, Child Tax Credit, Head of Household filing status, and the family-size differential of the EITC, would be available to all taxpayers regardless of income. The Family Credit would consist of two components – one would apply to each taxpayer and a second aspect would be available to any taxpayer who claims a "qualifying child" under IRC § 152(c) or a "qualifying relative" under IRC § 152(d). ¹⁷ There would be no cap on the number of qualifying children the taxpayer could claim.	
					3. Amend IRC § 152(d)(1)(D) so that the term "qualifying relative" means an individual "who is not claimed as a qualifying child of such taxpayer or any other taxpayer for any taxable year in the calendar year in which such taxable year begins."	
					4. Amend IRC § 152(f) to provide a definition of "support" that excludes any means-tested federal, state, or local benefits paid on behalf of or for the qualifying child or qualifying relative.	
					5. Once family status is determined under the rules of the Family Credit, the taxpayer could qualify for certain add-on credits. For example, if the child qualified as a qualifying child of the taxpayer, the taxpayer could receive an add-on for child care. Congress also could enact an add-on credit for disabled taxpayers or dependents or for taxpayers who provide primary care for members of their extended families inside or outside of their homes. As under current law, add-on credits may have supplemental eligibility requirements geared to the specific purpose of the credit, but the foundational eligibility requirements should be the same – those for the Family Credit. This approach guards against inconsistencies and "complexity creep."	
					6. Enact a refundable "add-on" credit for noncustodial parents of qualifying children who pay substantially all child support legally due for that tax year. ²⁰ This add-on would recognize that noncustodial parents who pay child	

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					<p>(continued) support have a reduced ability to pay federal income tax and would improve compliance by reducing unnecessary tax disputes arising from dueling tax claims by the custodial and noncustodial parent. Moreover, the credit may eliminate the need to retain the complex special rules (and the resulting disputes) for divorced or separated parents regarding waiving the dependency exemption under IRC § 152(e).</p> <p>7. Replace the current EITC with a modified EITC that is a refundable credit based solely on a taxpayer's individual earned income and available to low income wage earners, age 18 or older, who are not qualified children or qualified relatives of another taxpayer. The objective is to eliminate the variation in EITC amounts based on the number of qualifying children the taxpayer claims, if any, since tax relief based on family size would be reflected in the Family Credit discussed above. The adjusted gross income limitation of IRC § 32(a)(2)(B) and the investment income rule of IRC § 32(i) would be retained, thereby ensuring the refundable credit would go to low income taxpayers who do not have significant investment or other income.</p> <p>8. Repeal the head of household filing status under IRC § 1(b) and 2(b). Allocate the tax savings provided by repeal to the Family Credit.</p> <p>9. Amend IRC § 7703(b) to permit taxpayers who have a legally binding separation agreement and who live apart on the last day of the tax year to be considered "not married" for purposes of filing status.</p>	
2008	3	Simplify and Streamline Education Savings Tax Incentives.	Consolidate the many separate tax incentives in existence to facilitate saving for and spending on education, since taxpayers can only respond to incentives that they know exist and can understand.		<p>The National Taxpayer Advocate recommends that Congress simplify the education provisions in the IRC through the following measures:</p> <p>Consolidate the provisions to the extent possible and clearly state how the remaining incentives interact. For example, Congress should consolidate the Hope Scholarship and Lifetime Learning Credits and make clear whether taxpayers can take advantage of several incentives in the same tax year.</p> <p>Provide consistent standards regarding student eligibility, such as the relationship of the student to the taxpayer, the age of the student, and the type of enrollment.</p> <p>Provide a uniform definition of "qualifying higher education expenses" and "eligible education institution."</p> <p>Provide consistent income-level thresholds, phase-out calculations, and inflationary adjustments, unless inconsistency is justified by compelling policy reasons.</p> <p>After initially using sunset provisions to test the education incentives and any associated simplification amendments, Congress should make all education incentives permanent.</p>	
2008	4	Simplify and Streamline Retirement Savings Tax Incentives.	Consolidate existing retirement savings tax incentives, or, at a minimum, establish uniform rules regarding hardship withdrawals, plan loans, and portability.		<p>The National Taxpayer Advocate urges Congress to take a fresh look at the significant complexity of the retirement plan system. Congress should consolidate retirement plans where the differences in plan attributes are trivial. Such consolidation would reduce confusion and may lead to increased participation, or at least to fewer inadvertent errors. For instance, Congress should consider establishing one retirement plan for individual taxpayers, one tailored for small businesses, and one suitable for large businesses (eliminating plans that are limited to governmental entities). With or without consolidation of retirement plans, the National Taxpayer Advocate recommends that Congress establish uniform rules regarding hardship withdrawals, plan loans, and portability. Creating a uniform set of rules should (1) eliminate inadvertent errors, (2) enable greater portability among plans, and (3) increase participation by employers.</p>	

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2008	5	Provide Guidance on Worker Classification to Curb Abuses.	In order to reduce uncertainty and noncompliance: (1) replace § 530 with a provision applicable to both employment and income taxes and require Treasury to issue associated industry-specific guidance, (2) develop an electronic tool to determine worker classification automatically, (3) allow both employers and employees to request classification determinations, and (4) conduct public outreach to increase understanding of rules and consequences of worker classification.		To reduce complexity and confusion, promote compliance, and improve tax administration, the National Taxpayer Advocate recommends that Congress take the following legislative actions: Require the Department of Treasury and the IRS to publish guidance on classification for both income and employment taxes.	
					Direct the IRS to develop a program similar to the Employment Status Indicator of the United Kingdom.	
					Repeal § 530 of the Revenue Act of 1978 1 and replace it with an Internal Revenue Code (IRC) provision providing a safe harbor applicable to both federal income and employment taxes, which allows the taxpayer to establish a reasonable basis for the classification. In making the classification determination, the IRS should be authorized to consider industry practices.	
					Amend Internal Revenue Code (IRC) § 7436 to permit workers to petition the United States Tax Court to review the IRS's classification determinations.	
					Require service recipients to issue Forms 1099-MISC to incorporated service providers and increase the penalties for failure to comply with the information reporting requirements of IRC § 6041A.	
					Amend IRC § 3402(p)(3) to authorize the IRS to agree not to challenge the classification of workers who are party to a voluntary income tax withholding agreement.	
					Amend IRC § 3406 to require backup withholding for substantially noncompliant Schedule C filers. Congress should also authorize the Secretary to exempt service recipients from back-up withholding responsibilities on payments to Schedule C filers who present valid Compliance Certificates.	
					Direct Treasury and the Joint Committee on Taxation to report on the operation of the revised worker classification rules and provide recommendations to increase compliance.	
					Require the IRS and the Department of Labor to conduct targeted public awareness campaigns to inform workers of the comparative rights afforded to employees and independent contractors, the tax consequences associated with each classification, and the opportunity to enter into voluntary income tax withholding agreements.	
2008	6	Simplify Tax Treatment of Cancellation of Debt Income.	In order to reduce uncertainty and noncompliance: (1) replace § 530 with a provision applicable to both employment and income taxes and require Treasury to issue associated industry-specific guidance, (2) develop an electronic tool to determine worker classification automatically, (3) allow both employers and employees to request classification determinations, and (4) conduct public outreach to increase understanding of rules and consequences of worker classification.	IRC § 61(a)(12) IRC § 108	The National Taxpayer Advocate recommends that Congress pass legislation to make it easier for financially distressed taxpayers to exclude CODI from gross income. As discussed above, Congress established a general rule that CODI is includible in gross income but also created certain exclusions that generally are geared toward providing relief for taxpayers who are experiencing financial difficulties. We suggest three options for consideration: Provide that CODI is not includable in gross income unless the total amount of CODI attributable to the taxpayer from all sources exceeds a certain threshold for the taxable year. This would be the simplest option for taxpayers, because they would be relieved of the burden of learning about and filing Form 982 to claim an exclusion. The IRS could automatically program its computers to ignore CODI if the sum of CODI reported on Forms 1099-C with respect to the taxpayer falls below the threshold. The threshold should be set at a level high enough to provide relief to a majority of the financially distressed taxpayers whom the proposal is designed to assist and low enough to prevent widespread abuses that could undermine the general rule that CODI is taxable.	
					2. Provide that taxpayers with CODI below a certain threshold do not need to make adjustments to their tax attributes. This option is less attractive in that taxpayers would still have to file Form 982, would still have to distinguish between "qualified" and "non-qualified" indebtedness for purposes of the qualified principal residence indebtedness exclusion, and would still have to compute insolvency. ¹⁷ But it would create a more	

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					<p>limited exception to the general rule that CODI is taxable than would be the case under option 1, while alleviating some taxpayer burden and reducing recordkeeping requirements.</p> <p>3. Amend the definition of “qualified principal residence indebtedness” to provide that the full amount of canceled mortgage debt qualifies for exclusion, even if a portion of the proceeds was used to pay off non-residential debt like car loans, medical bills, student loans, or credit card balances.¹⁸ This option would provide complete relief from CODI tax liability attributable to mortgage debt cancellation for most homeowners or persons who have lost their homes. However, it would not relieve taxpayers of the burden of filing Form 982 to claim the exclusion or provide any relief to taxpayers who have CODI from canceled debts (e.g., car loans, medical bills, student loans, or other consumer debt) that are not rolled into a mortgage.</p>	
2008	7	Eliminate (or Reduce) Procedural Incentives for Lawmakers to Enact Tax Sunsets	Enact one of the proposed alternatives to reduce procedural incentives for lawmakers to enact sunset provisions, in order to eliminate taxpayer and governmental uncertainty.		The National Taxpayer Advocate recommends that Congress consider ways to ensure that procedural rules, such as PAYGO rules, “section 302 spending allocation” limits, budget scoring rules, and the “Byrd” rule, do not provide an inappropriate incentive for legislators to enact tax laws with sunset provisions.	
2008	8	Eliminate (or Simplify) Phase-Outs	Revisit the current phase-out structure whereby certain tax benefits are phased out as taxpayer income increases, since phase-outs are burdensome, make it difficult for taxpayers to estimate their liabilities, and a similar objective could be achieved by altering marginal rates.		<p>The National Taxpayer Advocate recommended in her 2006 annual report that Congress eliminate or at least simplify phase-outs, and reiterates those recommendations again this year as Congress considers tax reform options.¹⁵ Although in most instances outright repeal would improve tax administration, the National Taxpayer Advocate recommends policymakers consider the questions below with respect to each phase-out. Congress should analyze these issues as well as the effect of phase-outs on marginal rates.</p> <p>1. Can we identify a tax policy reason (other than revenue scoring) for each phase-out? Do those tax policy benefits outweigh the cost of complexity and noncompliance that the phase-out will generate? If so, do such policy reasons suggest a particular income level at which a phase-out makes sense?</p> <p>2. Is it feasible to use a single measure of income for each phase-out, such as “adjusted gross income?” Is there a good policy reason to deviate from the existing measures of income that outweighs the complexity such deviation will create? Will those policy reasons justify increasing the number of computations and quasi-returns (i.e., additional forms, schedules, and worksheets) that taxpayers have to fill out each year and the noncompliance that such complexity will generate?</p> <p>3. Are there important tax policy reasons not to index each phase-out for inflation? Unless phase-outs are indexed for inflation, the real income level set by policymakers to trigger them will drift downward each year until the tax benefit affects only a few of the lowest income taxpayers while burdening all taxpayers with a needlessly complex tax code. Unindexed phase-outs might also begin to overlap with other phase-outs that are indexed for inflation, producing unexpectedly high effective marginal tax rates at certain income levels.</p> <p>4. Should phase-outs create penalties for married or unmarried taxpayers or otherwise affect taxpayers differently based on filing status?</p> <p>5. Should phase-out ranges be wide or narrow? Phase-out ranges that eliminate tax benefits gradually (e.g., ratably) over a reasonably wide phase-out range are less likely to create unexpectedly high effective marginal tax rates. When phase-outs result in unexpectedly high effective marginal tax rates they make it difficult for taxpayers to predict their liability ahead of time, reduce the incentive to work, and create planning opportunities for taxpayers who are able to shift income from one year to the next or to related individuals or entities. They also increase the perception of the tax law as unfair and arbitrary, which may reduce voluntary compliance. However, phase-outs with wider phase-out ranges generally affect more taxpayers directly.</p>	

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					<p>6. Is there any tax policy reason for phase-out formulas to differ as widely as they do? Uniform and simple phase-out formulas might make it easier for taxpayers to figure out how additional income will affect their tax benefits. They might also allow the IRS to reduce the number of forms, worksheets, and schedules that taxpayers need to fill out.</p> <p>7. Is there a good policy reason for phase-out ranges to overlap? On one hand, overlapping phase-outs can create unexpectedly high effective marginal income tax rates for taxpayers in those ranges. On the other hand, creating standard phase-out ranges, as proposed by some practitioner groups, could have the advantage of increasing the transparency of the tax code because taxpayers may be more likely to know what the phase-out range is and whether they are likely to be subject to it. Uniform ranges might also enable the IRS to reduce the number of forms, worksheets, and schedules required to administer phase-outs.</p> <p>8. Simplify the estimated tax penalty computation and provide an automatic waiver of de minimis estimated tax penalties;</p> <p>9. Allow the IRS to abate estimated tax penalties for first-time estimated tax payers who have reasonable cause;</p> <p>10. Make the trust fund recovery penalty more effective by clarifying that it covers third party payers; and</p> <p>11. Reduce the penalty for failure to make tax deposits in the prescribed manner.</p>	
2008	9	Reform the tax penalty regime	Conduct study on the tax penalty regime to determine the effect of individual penalties on voluntary compliance and whether similar objectives could be achieved under a simplified and consolidated penalty regime.		<p>Our primary recommendation is for Congress to have the IRS (1) collect and analyze more detailed penalty data on a regular basis, and (2) conduct an empirical study to quantify the effect of each penalty on voluntary compliance. This quantitative research should also identify changes to penalty laws and penalty administration that would improve voluntary compliance. Congress should appropriate additional funds for this research, as necessary. Without such research, any penalty analysis will be somewhat subjective and superficial. Nonetheless, the limited data and analysis that are available, as discussed in greater detail in volume II of this report, suggest the following changes to the major penalty provisions would promote voluntary compliance based on the principles described above:</p> <p>1. Prevent IRS systems from automatically assessing accuracy-related penalties without considering all of the facts and circumstances;</p> <p>2. Consider the feasibility of clarifying the definition of a “tax shelter” for purposes of the substantial understatement penalty;</p> <p>3. Restructure the penalty for failure to file a “reportable transaction” information disclosure;</p> <p>4. Improve the proportionality and effectiveness of the failure to file penalty for those who are more than six months late;</p> <p>5. Reduce the penalty for late filers who timely pay within a period of extension;</p> <p>6. Reduce the number of failure to pay penalty rates and eliminate interaction with the failure to file penalty;</p> <p>7. Simplify the prior year estimated tax payment safe harbor and encourage taxpayers to use it;</p> <p>8. Simplify the estimated tax penalty computation and provide an automatic waiver of de minimis estimated tax penalties;</p> <p>9. Allow the IRS to abate estimated tax penalties for first-time estimated tax payers who have reasonable cause;</p> <p>10. Make the trust fund recovery penalty more effective by clarifying that it covers third party payers; and</p> <p>11. Reduce the penalty for failure to make tax deposits in the prescribed manner.</p>	

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2008	10	Modify § 6707A to Ameliorate Unconscionable Impact	Amend § 6707A, which imposes a penalty of \$100,000 per individual per year and \$200,000 per entity per year for failure to make special disclosures of “listed transactions.” Since the penalty is imposed regardless of culpability, it has the ability to bankrupt middle-class families with no intention of utilizing a tax shelter.	IRC § 6707A	The National Taxpayer Advocate recommends that the amount of the penalty imposed by Section 6707A be revised so that it bears a proportional relationship to the amount of tax savings. We understand that the purpose of the penalty is to promote disclosure, but the benefits of disclosure must be balanced against the burdens the penalty imposes on taxpayers. A transaction, even if tax-motivated, does not present significant compliance concerns if a taxpayer receives little or no tax savings. To the contrary, compliance concerns generally increase in direct proportion to the amount of the claimed tax savings. We recommend that the penalty be restructured to reflect this proposition. The National Taxpayer Advocate is also concerned about the absence of a “reasonable cause” exception, the “stacking” of multiple Section 6707A penalties, and the potential imposition of the Section 6707A penalty on taxpayers who derived no tax benefit whatsoever. If the IRS concludes, for example, that neither the taxpayer nor his advisors had any knowledge that a transaction was questionable, we believe the IRS should have the authority to waive the penalty. For a discussion of these concerns and related penalty issues, see A Framework for Reforming the Penalty Regime, volume 2, <i>infra</i> , and Legislative Recommendation, Reforming the Penalty Regime, <i>supra</i> .	
2008	11	Regulate Federal Tax Return Preparers	Enact registration and certification process for “unenrolled” federal tax preparers, who constitute the majority of tax return preparers, in order to protect taxpayer rights and increase compliance.	IRC § 7701(a)(36)	The National Taxpayer Advocate recommends that Congress enact a registration, examination, certification, and enforcement program for unenrolled tax return preparers. This program should consist of the following components: Any tax return preparer as defined in IRC § 7701(a)(36) other than an attorney, certified public accountant, or enrolled agent must register with the IRS, and Congress should authorize the IRS to impose a per-return penalty for failure to register, absent reasonable cause.	
					All registered preparers must pass an initial examination designed by the Secretary to test the technical knowledge and competency of unenrolled return preparers to prepare federal tax returns. The exam can be administered in two separate parts. The first part would address the technical knowledge required to prepare relatively less complex Form 1040-series returns. The second part would test the technical knowledge required to prepare business returns, including complex sole proprietorship schedules.	
					All registered preparers must complete CPE requirements as specified by the Secretary. The Secretary should have the authority to permit preparers to satisfy such requirements by instead passing a specified examination.	
					All registered preparers must renew their registration every three years, at which point they must show evidence of completion of CPE requirements.	
					The Secretary should be authorized and directed to conduct a public awareness campaign to inform the public about the registration requirements and offer guidelines about what taxpayers should look for in choosing a qualified tax return preparer.	
2008	12	Amend Refund Delivery Options.	Change refund delivery options to: (1) minimize turnaround times, (2) implement a Revenue Protection Indicator, (3) allow unbanked taxpayers to receive refunds on stored value cards, and (4) conduct a public awareness campaign on refund delivery options.		The National Taxpayer Advocate recommends that Congress require the Department of Treasury and the IRS to: Evaluate the entire refund process to determine opportunities to shorten the turnaround time;	
					Develop a pilot program to determine how the inclusion of a Revenue Protection Indicator in the acknowledgement file will impact tax administration. Evaluate the feasibility of including such information in the current “Where’s My Refund” online application;	
					Evaluate existing stored value card programs to distribute government benefits, with particular emphasis on the experience of FMS’s Direct Express Program to distribute Social Security benefits;	

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					Incorporating lessons learned from existing programs, develop a SVC program to distribute refunds to individual taxpayers before the 2010 tax filing season; and	
					Conduct an annual public awareness campaign to provide accurate information to taxpayers regarding available refund delivery alternatives, associated turnaround times, and any other pertinent information.	
2008	13	Limit Ability of IRS to Reduce Refunds in order to Satisfy Unassessed Tax Liabilities.	Revisit Revenue Ruling 2007-51, which allows the IRS to reduce refunds in order to satisfy unassessed tax liabilities, thereby undermining taxpayer rights under § 6212 to challenge a proposed deficiency before assessment and payment of the tax.	Revenue Ruling 2007-51 and IRC § 6402	Amend IRC § 6402 to change the term “liability” to “assessed liability,” thereby permitting the IRS to credit any overpayment only against an assessed tax liability.	
2008	14	Prohibit IRS from Conditioning Certain Approvals on Taxpayer's Waiver of Levy Prohibition.	Amend § 6331(k)(3)(A) to prohibit IRS from conditioning approval of an installment agreement or offer in compromise on the taxpayer's waiver of the general prohibition on levies on the taxpayer's assets.	IRC § 6331(k)	Amend IRC § 6331 to prohibit the IRS from requiring the taxpayer to waive the IRC § 6331(k) prohibition on levies as a condition precedent to the IRS's consideration or acceptance of installment payments or an OIC.	
2008	15	Provide Duplicate Notices to Credible Alternate Addresses	Develop procedures to check third party address databases for credible alternate addresses, and require notice to the alternate address when the notice establishes legal rights and obligations.	IRC § 7701	The National Taxpayer Advocate recommends that Congress amend IRC § 7701 to add a definition of “last known address” that incorporates case law and current regulations.	
					Congress also should direct the Secretary of Treasury to: (1.) Develop procedures for checking third party databases for credible alternate addresses prior to sending notices that establish legal rights and obligations (i.e., Statutory Notices of Deficiency, Collection Due Process notices, notices of Federal tax lien filing, etc.); and	
					(2.) When there is a credible alternate address, require the IRS to mail the notice simultaneously to the last known address and to the credible alternate address (as defined by the Secretary).	
2008	16	Allow Self-Employed Taxpayers to Deduct Health Insurance Costs.	Repeal § 162(l)(4) to allow self-employed taxpayers to deduct health insurance costs when determining net earnings for self-employment tax purposes.	IRC § 162(l)(4)	Congress should repeal IRC § 162(l)(4) to place self-employed taxpayers on an equal footing with their wage-earning counterparts.	Pub. L. No. 111-124, § 2041 STAT 2560 (2010).
2008	17	Allow Treasury to Determine Standard Mileage Deduction for Charitable Activities.	Amend § 170(i) to allow Treasury to determine the standard mileage rate for charitable activities, in order to align this provision with the mileage rate for business activities, which is adjusted by the IRS for inflation annually.	IRC § 170(i)	The National Taxpayer Advocate recommends that Congress amend IRC § 170(i) to allow the Secretary of the Treasury to determine the standard mileage rate for charitable activities.	
2007						
2007	KLR 1	Taxpayer Bill of Rights	Codify a taxpayer bill of rights to formalize the reciprocal rights and duties of taxpayers and the IRS. Provide de minimus apology payments to taxpayers in cases of excessive expense or undue burden		Recommendation 1: Taxpayer Bill of Rights The National Taxpayer Advocate recommends that Congress enact a Taxpayer Bill of Rights that sets forth the fundamental rights and obligations of U.S. taxpayers, as follows: Taxpayer Rights include: Right to be Informed (including adequate legal and procedural guidance and information about taxpayer rights)	
					Right to be Assisted	
					Right to be Heard	
					Right to Pay No More than the Correct Amount of Tax	

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					Right of Appeal (administrative and judicial)	
					Right to Certainty (including guidance, periods of limitation, no second exam, and closing agreements)	
					Right to Privacy (including due process considerations, least intrusive enforcement action ,and search and seizure protections)	
					Right to Confidentiality	
					Right to Representation (other compensation payments)	
					Taxpayer Obligations include: Obligation to be honest	
					Obligation to be cooperative	
					Obligation to provide accurate information and documents on time	
					Obligation to keep records	
					Obligation to pay taxes on time	
					Congress should require the Secretary to publish these fundamental rights and obligations in a document that also links specific statutory protections to the Taxpayer Bill of Rights.	
					Recommendation 2: De Minimis Apology Payments The National Taxpayer Advocate also recommends that Congress amend Internal Revenue Code (IRC) § 7811 to grant the National Taxpayer Advocate the discretionary, nondelegable authority to compensate taxpayers where the action or inaction of the IRS has caused excessive expense or undue burden to the taxpayer, and the taxpayer meets the IRC § 7811 definition of significant hardship. ⁵ Discretionary payments should range from a minimum of \$100 up to a maximum of \$1,000, indexed for inflation. Unless otherwise provided by specific appropriation, authorize the Secretary of the Treasury to allocate no more than \$1 million per year to “apology” payments.	
					Amend IRC § 7803(c)(2)(B)(ii) to require the National Taxpayer Advocate to include in her Annual Report to Congress a section summarizing the awards made under this amendment.	
					Amend the Code to exclude these “apology” payments from gross income.	
2007	KLR 2	Address Noncompliance in the Cash Economy	Enact reforms to increase compliance in the cash economy. Suggested reforms include: (1) increased use of the electronic payment system for estimated tax payments, (2) authorization of voluntary withholding agreements, and (3) increased requirements for reporting by financial institutions.	IRC § 170(i)	1. Increase the use of the IRS’s electronic payment system to for estimated tax payments;	
					2. Authorize voluntary withholding agreements;	
					3. Eliminate the corporate exception to information reporting for small corporations, if the National Research Program shows significant noncompliance;	
					4. Accelerate the taxpayer identification number validation process;	
					5. Provide for withholding on payments to noncompliant contractors;	
					6. Require information reporting by financial institutions on credit and other “payment card” receipts; and	
					7. Require financial institutions to report all accounts to the IRS by eliminating the \$10 minimum on interest reporting	

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2007	KLR 3	Simplify Home Office Business Deduction	Amend § 280A to create an optional standard home office deduction to eliminate complexity and ease the burden on taxpayers who claim the deduction.		Amend IRC § 280A to create an optional standard home office deduction. The legislative provision should provide the following: Direct the Secretary of the Treasury to draft regulations detailing a method to calculate an optional standard home office deduction; Require that such regulations calculate the deduction by multiplying an applicable standard rate, as determined and published by the Commissioner of the IRS on a periodic basis, by the applicable square footage of the portion of the dwelling unit described in § 280A(c); and Encourage the IRS to simplify the reporting of the optional standard deduction on Schedule A, Itemized Deductions; Schedule C, Profit or Loss From Business; and Schedule F, Profit or Loss From Farming.	
2007	KLR 4	Eliminate Tax Strategy Patents	Bar tax strategy patents, which increase compliance costs and undermine respect for congressionally-created incentives, or require the PTO to send any tax strategy patent applications to the IRS so that abuse can be mitigated.		The National Taxpayer Advocate recommends that Congress bar tax strategy patents and prevent patent holders from enforcing them. If Congress does not prohibit them, it should require the PTO to provide the IRS with copies of all tax strategy patent applications so that the IRS can determine whether the strategy should be "listed" as one that has to be flagged for the IRS. The legislation should also provide for the IRS to assist the PTO in identifying claims that are not unique.	Pub. L. No. 112-29 § 14(a), 125 Stat. 284, 327 (2011).
2007	KLR 5	Extend Exempt Organizations' Advance Ruling Periods in Cases of Extreme Application Processing Delays	Bar tax strategy patents, which increase compliance costs and undermine respect for congressionally-created incentives, or require the PTO to send any tax strategy patent applications to the IRS so that abuse can be mitigated.	IRC § 501(c)(3) Treas. Reg. § 1.170A-9(e)(5)(i); Treas. Reg. § 1.509(a)-3(d)(4);	In order to address the fundraising difficulties faced by exempt organizations when an advanced ruling letter is not obtained in a timely fashion, extend advance ruling period by one year when an advance ruling letter is issued less than eight months prior to the end of the initial five-year advance ruling period.	
2007	KLR 6	Reduce Compliance Burden on Small Exempt Organizations	For organizations with less than \$25,000 in gross receipts, create short-forms for the application for recognition (Form 1023) and annual filing (Form 990).	IRC § 501(c)(3)	Retain the application filing exemption of IRC § 508(c)(1)(B) but amend the Code to provide that non-private foundations with gross receipts not normally more than \$25,000 may submit a short-form application for recognition of IRC § 501(c)(3) status (i.e., a Form 1023-EZ).	
2007	KLR 6.1	Require the IRS to Retain Form 990-EZ	The National Taxpayer Advocate submitted comments on the draft redesigned Form 990 that, among other things, urged the IRS to retain Form 990-EZ. Nonetheless, the IRS stated during fall 2007 that it planned to eliminate Form 990-EZ at some point in the future and instead require small EOs to complete certain designated parts of the redesigned Form 990.	IRC § 501(c)(3)	Require the IRS to continue to offer a separate short-form ("EZ") version of Form 990 that may be filed by small exempt organizations in lieu of the long-form Form 990 or parts thereof.	
2007	KLR 6.2	Require the IRS to Establish a Voluntary Compliance Program for Exempt Organizations	Create an ongoing voluntary compliance program for exempt organizations.	IRC § 501(c)(3)	Require the IRS to create a broad-based, formal, and ongoing voluntary compliance program for exempt organizations similar to those offered in the areas of employee plans, tax-exempt bonds, and Indian tribal governments by September 30, 2008.	

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2007	KLR 7	Provide Taxpayers Protection from Third Party Payer Failures	In order to protect small businesses and other taxpayers who rely on small third party payers to transmit payments, amend the Code to make third party payers jointly and severally liable for amounts not paid to Treasury, impose registration and bonding requirements for third party payers, and subject third party payers to the Trust Fund Recovery Penalty.		Amend the Code to define “third party payer” as any person who provides services of filing, reporting, withholding, and payment of employment taxes on behalf of client taxpayers if such person has the authority, control, receipt, custody, or disposal of client taxpayers’ funds intended by the taxpayers to be used for the purpose of making federal payroll tax deposits;	
					Amend the Code to make a third party payer jointly and severally liable for the amount of tax collected from client employers, but not paid over to the Treasury, plus applicable interest and penalties;	
					Amend the Code to authorize the Secretary of the Treasury to require third party payers that have the authority, control, receipt, custody or disposal of client funds intended for the purpose of making federal payroll tax deposits to: (1) register with the IRS; (2) be sufficiently bonded; and (3) provide mandatory disclosure on the form prescribed by the IRS to client taxpayers that the employer may be potentially responsible for unpaid payroll taxes and that the employer can and should periodically verify, through IRS, that their employment tax liability is satisfied in full;	
					Amend IRC § 6671(b) to include “third party payers” within the definition of a “person” subject to the trust fund recovery penalty imposed by IRC § 6672(a); and Amend the U.S. Bankruptcy Code, „6 to clarify that IRC § 6672 penalties survive bankruptcy, even when the debtor is not an individual.	
2007	ALR 1	Expand Definition of TIN to Include IRSN	Allow taxpayers who have been assigned Internal Revenue Service Numbers (ISRN) following identity theft to claim exemptions and the EITC, rather than requiring a TIN in order to take advantage of these benefits.	IRC §§ 151(e), 32(c)(1)(F), and 32(c)(3)(D)	The National Taxpayer Advocate recommends that Congress amend IRC §§ 151(e), 32(c)(1)(F), and 32(c)(3)(D) to require a taxpayer to provide a valid TIN or IRSN in order to claim an exemption and the EITC. This recommendation would enable an identity theft victim who files a tax return using an IRSN to claim an exemption or the EITC.	
2007	ALR 2	Authorize Treasury to Issue Guidance Specific to § 6713.	Clarify that Treasury may promulgate regulations for criminal penalties under § 7216 without any consequences on civil penalties under § 6713.	IRC §§ 6713 and 7216	The National Taxpayer Advocate recommends that Congress amend IRC § 6713 to authorize the Secretary to prescribe regulations under IRC § 6713. Specifically, Congress should amend IRC § 6713 as follows: Amend subsection (b) to read: “(b) Exceptions. — Except as otherwise provided in regulations prescribed by the Secretary under subsection (d), the rules of section 7216(b) apply for purposes of this section.”	
					Create subsection (d) to read: “(b) Regulations.—The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section.”	
2007	ALR 3	Allow Taxpayers to Raise Innocent Spouse Provisions as a Defense in Collection Actions	Allow taxpayers to raise §§ 6015 and 66 defenses in collections proceedings in Federal District Courts.	IRC §§ 6015 and 66	Amend IRC §§ 6015 and 66 to clarify that taxpayers may raise relief under IRC §§ 6015 or 66 as a defense in a proceeding brought under any provision of Title 26 (including §§ 6213, 6320, 6330, 7402, and 7403) or any case under title 11 of the United States Code.	
2007	ALR 4	Allow Referrals to Low Income Taxpayer Clinics	Amend § 7526(c) to allow IRS employees to refer taxpayers to Low Income Taxpayer Clinics.	IRC § 7526(c)	The National Taxpayer Advocate recommends that Congress amend IRC § 7526(c) to add a special rule stating that notwithstanding any other provision of law, IRS employees may refer taxpayers to Low Income Taxpayer Clinics receiving funding under this section. This change will allow IRS employees to refer a taxpayer to a specific clinic for assistance. In making such referrals, the IRS should maintain its current disclaimer language to prevent any misconception that taxpayers may be either advantaged or disadvantaged in their cases based on their decision of whether to use a clinic.	

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2007	ALR 5	Restrict Tax Return Disclosures to Necessary Content	Amend § 6103(c) to limit disclosure of return information solely to the extent necessary to achieve the purpose for which consent was requested. Require annual disclosure to the Joint Committee on Taxation regarding the number and types of disclosures made.	§ 6103(c)	The National Taxpayer Advocate recommends that IRC § 6103(c) be amended to limit the disclosure of tax returns and tax return information requested through taxpayer consent solely to the extent necessary to achieve the purpose for which consent was requested. Elsewhere in this report, the National Taxpayer Advocate makes an administrative recommendation to amend Form 4506 and related forms to allow taxpayers to specify the reasons for which they are granting consent. Limiting the use of tax return information to the express purpose of the taxpayer consent prevents misuse of taxpayer information.	
					Additionally, IRC § 6103(p)(3)(C) should be amended to require the Secretary of the Treasury to include in the Treasury's annual disclosure report to the Joint Committee on Taxation detailed information about the number and types of disclosures pursuant to taxpayer consent. Requiring the IRS to track disclosures made through IRC § 6103(c) consent will enable the IRS to monitor how § 6103(c) consents are being used and whether increased taxpayer education or oversight are necessary to protect taxpayer information.	
					To provide a deterrent to misusing taxpayer return information obtained pursuant to a § 6103(c) consent, IRC §§ 7213A and 7431 should be amended to apply criminal and civil sanctions. Implementing criminal and civil sanctions of up to \$1,000 per violation will dissuade lenders from using tax return information for reasons outside the scope of the taxpayer's consent.	
					Finally, to ensure that lenders no longer ask individuals to sign blank or incomplete forms, IRC § 7431 should be amended to impose a civil penalty of \$500 for each attempt to obtain a signed blank or incomplete Form 4506, 4506-T, and 2858, subject to a reasonable cause exception. Although the IRS can and should request the cooperation of mortgage and other lenders in ensuring that borrowers do not sign blank or incomplete forms, properly applied penalties will further demonstrate the importance of safeguarding taxpayer information and encourage the users of such data to conduct the necessary due diligence.	
2007	ALR 6	Ease Payment and Reporting Requirements Related to Home Care Service Workers	In order to allow Home-Care Service Recipients to avoid complicated payment and reporting requirements imposed due to their employment of Home Care Service Workers (HCSW), amend § 3121(d) (3) to provide that a HCSW is the statutory employee of the administrator of the HCSW funding source.	IRC § 3121(d) (3)	The National Taxpayer Advocate reiterates her 2001 recommendation ⁴ and recommends that Congress: Amend IRC § 3121(d)(3) to provide that a Home Care Service Worker is the statutory employee of the administrator of the Home Care Service Worker funding (defined as states, localities, their agencies, or intermediate service organizations, regardless of the original funding source).	